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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,425	05/10/2005	Harald Gosebruch	47588-214072	5010
26694	7590	09/25/2009		
VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER KELLY, RAFFERTY D	
			ART UNIT 2876	PAPER NUMBER
			MAIL DATE 09/25/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,425

Applicant(s)

GOSEBRUCH ET AL.

Examiner

RAFFERTY KELLY

Art Unit

2876

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.4.6-12.14-17 and 51-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.4.6-12.14-17 and 51-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Amendment and Request for Continued Examination filed on 7/13/09 has been acknowledged and entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 66-73 and 75-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Bismarck et al. (US 2001/0010332 A1).

Regarding claim 66, Bismarck teaches a package, comprising: a three dimensional box defined by a plurality of wall segments interconnected by folds (Fig. 4), the three dimensional box including a first portion (23) and a second portion (13) connected by a hinge [0040], the first portion and the second portion movable with respect to one another about the hinge between an open position (Fig. 5) and a closed position (Fig. 4), wherein the first portion and the second portion define a gap width (17) when in the closed position (Fig. 4); and a mark for identification of the package (12), wherein the mark comprises a non-predetermined random identifier [0058] comprising the gap width (Fig. 5).

Regarding claim 67, Bismarck teaches further comprising a marking generated based on the non-predetermined random identifier (12).

Regarding claim 68, Bismarck teaches wherein the gap width is detectable and is at least one of filed or deposited as an optionally coded marking in at least one of a data bank or print (12) on the package (Fig. 5).

Regarding claim 69, Bismarck teaches further comprising a code applied to the package (35).

Regarding claim 70, Bismarck teaches wherein the package further comprises at least one of a primary packaging (32a) or a secondary packaging (8a), or a tertiary packaging (Fig. 4).

Regarding claim 71, Bismarck teaches wherein at least one of the mark, the code or the marking is visibly arranged on at least one of the primary packaging, the secondary packaging, or the tertiary packaging (35 – Fig. 5).

Regarding claim 72, Bismarck teaches wherein the marking (12) is arranged on the secondary packaging (8a), the marking being designed as a link number, wherein the link number is generated from at least one of the mark, the code, or the marking arranged on the primary packaging (mark is linked to other indicia on the package) [0053 - 0054].

Regarding claim 73, Bismarck teaches a package, comprising: a three dimensional box defined by a plurality of wall segments interconnected by folds (Fig. 4); a foil wrapping (32a and 33a) surrounding the three dimensional box, the foil wrapping including a first portion (33a) overlapping a second portion (32a) in an overlap region; and a mark for identification of the package (37), wherein the mark comprises a non-

predetermined random identifier [0058] comprising at least a portion of the overlap region (Fig. 4 and Fig. 5).

Regarding claim 75, Bismarck teaches wherein overlap region comprises a seam defining a seam width (width of 33a), and the non-predetermined random identifier comprises the seam width (37 spans the width of 33a).

Regarding claim 76, Bismarck teaches wherein the first portion of the foil wrapping defines a first cut edge (top of 33a), and the second portion of the foil wrapping defines a second cut edge (bottom of 33a), and the non-predetermined random identifier comprises an angle between the first cut edge and the second cut edge (identifier is between two edges at an angle).

Regarding claim 77, Bismarck teaches further comprising a marking generated based on the non-predetermined random identifier and arranged on the package (37).

Regarding claim 78, Bismarck further teaches wherein the non-predetermined random identifier is detectable and is at least one of filed or deposited as an optionally coded marking in at least one of a data bank or print on the package (37 is detectable and printed on the package).

Regarding claim 79, Bismarck teaches further comprising a code applied to the package (42).

Regarding claim 80, Bismarck teaches wherein the code includes a serial number and is in a predetermined and reproducible relationship to the mark [0053].

Regarding claim 81, Bismarck teaches wherein the package further comprises at least one of a primary packaging (32a), or a secondary packaging (33a), or a tertiary packaging (Fig. 4).

Regarding claim 82, Bismarck teaches wherein the at least one of the mark, the code (42) or the marking is visibly arranged on at least one of the primary packaging (Fig. 5), the secondary packaging, or the tertiary packaging.

Regarding claim 83, Bismarck teaches wherein the marking (37) is arranged on the secondary packaging (33a), the marking being designed as a link number (37 linked to other marks on the package), wherein the link number is generated from at least one of the mark (37), the code or the marking arranged on the primary packaging.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6-12, 14-17, 51-65, 74, and 84-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bismarck in view of Durst et al. (US 7089420 B1).

Regarding claim 1, Bismarck teaches a package, comprising a three dimensional box defined by a plurality of wall segments interconnected by folds (Fig. 4), the well segments formed of a fibrous material [0044]; and a mark for identification of the package (37), wherein the mark comprises a non-predetermined random identifier [0058].

Bismarck lacks the luminophores.

Durst et al. teaches a distribution of luminophores intermixed with fibers of the fibrous material (Col. 45 Lines 11-63, Col. 4 Lines 5-18, Col. 30 Lines 63-67).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claim 52, Bismarck teaches a package, comprising: a three dimensional box defined by a plurality of wall segments interconnected by folds (Fig. 4); a foil wrapping surrounding the three dimensional box (33); and a mark for identification of the package (32), wherein the mark comprises a non-predetermined random identifier [0058].

Bismarck lacks the luminophores.

Durst et al. teaches a distribution of luminophores intermixed with fibers of the fibrous material (Col. 45 Lines 11-63, Col. 4 Lines 5-18, Col. 30 Lines 63-67).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claim 84, Bismarck teaches a package, comprising: a three dimensional box defined by a plurality of wall segments interconnected by folds (Fig. 4); a foil wrapping surrounding the three dimensional box (33a); a label (32a) located on the three dimensional box on the foil wrapping [0052]; ink printing (42) located on the

label; and a mark (37) for identification of the package, wherein the mark comprises a non-predetermined random identifier [0058].

Bismarck lacks the luminophores.

Durst et al. teaches luminophores added to the ink printing (Col. 45 Lines 11-63, Col. 4 Lines 5-18, Col. 30 Lines 63-67).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claims 4 and 53, Bismarck in view of Durst teaches the package according to claim 1, as shown above.

Bismarck lacks that the luminophores are distributed in a random pattern.

Durst teaches wherein the luminophores are distributed in a random pattern (Col. 45 Lines 11-63).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claims 6 and 54, Bismarck further teaches further comprising a marking generated based on the random pattern and arranged on the package (37 is based on random pattern) [0058].

Regarding claims 7 and 55, Bismarck in view of Durst teaches the package according to claim 1, as shown above.

Bismarck lacks the details of the luminophores.

Durst teaches the distribution of the luminophores is detectable and is at least one of filed or deposited as an optionally coded marking in at least one of a data bank or print on the package (Col. 4 Lines 5-18, Fig. 7A-7B, Col. 45 Lines 11-42, Col. 30 Lines 63-67).

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claims 8 and 56, Bismarck further teaches further comprising a code applied to the package (42).

Regarding claims 9 and 57, Bismarck further teaches wherein the code includes a serial number (the code identifies the package) and is in a predetermined and reproducible relationship to the mark [0054].

Regarding claims 10 and 58, Bismarck further teaches wherein the code and the mark are in correlation with each other [0054].

Regarding claims 11 and 59, Bismarck further teaches wherein the correlation is formed by storage [0054] (42 stores information).

Regarding claims 12 and 60, Bismarck further teaches wherein the correlation is formed by a coding function [0054] (coding function is used to arrive at 42).

Regarding claims 14 and 61, Bismarck further teaches wherein the random identifier is arranged on the whole package or in a predefined region of the package (33a - Fig. 4).

Regarding claims 15 and 62, Bismarck further teaches wherein the package further comprises at least one of a primary packaging (32a), or a secondary packaging (33a), or a tertiary packaging (Fig. 4).

Regarding claims 16 and 63, Bismarck further teaches wherein at least one of the mark, the code (42), or the marking is visibly arranged on at least one of the primary packaging (Fig. 5), the secondary packaging, or the tertiary packaging.

Regarding claims 17 and 64, Bismarck further teaches wherein the marking (37) is arranged on the secondary packaging (33a), the marking being designed as a link number (37 is linked to the other numbers on the package), wherein the link number is generated from at least one of the mark (37) [0054], the code, or the marking arranged on the primary packaging.

Regarding claim 51, Bismarck further teaches wherein the fibrous material comprises cardboard [0044].

Regarding claim 64, Bismarck further teaches wherein the foil wrapping includes a tear strip, and the distribution of luminophores is located on the tear strip (Indicia 37 is on strip 33).

Regarding claim 74, Bismarck teaches the package of claim 73, as shown above.

Bismarck lacks the details of the pattern.

Durst teaches wherein the non-predetermined random identifier comprises air bubbles or a wave pattern (60a) in the overlap region.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use the luminophores in the code on the package because they provide a higher level of security than standard printing.

Regarding claim 85, Bismarck further teaches wherein the ink printing comprises a serial number [0054].

Regarding claim 86, Bismarck further teaches wherein the label (32a) is located between the three dimensional box (23) and the foil wrapping (33a).

Regarding claim 87, Bismarck further teaches further comprising: a marking generated based on the random pattern and arranged on the package (37) [0058]; and a code applied to the package, the code comprising a serial number having a predetermined and reproducible relationship to the mark (42) [0054]; wherein the ink printing comprises the serial number [0054].

Response to Arguments

Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection. New grounds of rejection are in view of Bismarck and have been required by amendments regarding the packaging.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAFFERTY KELLY whose telephone number is (571)270-5031. The examiner can normally be reached on Mon. - Fri. 800-1730 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rafferty Kelly/
Examiner, Art Unit 2876
9-17-09

/Michael G Lee/
Supervisory Patent Examiner, Art Unit 2876